South Carolina Law Review

Volume 18 | Issue 1 Article 22

1966

Workmen's Compensation

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A. Evaluation of Permanent Disability

Coleman v. Quality Concrete Prods. Inc.[1] is important because its factual situation is repeated almost routinely in hundreds of other cases before the industrial commission. The question involved, that of the evaluation of permanent disability for non-scheduled injury, has posed a constant problem for those dealing with workmen's compensation claims.[2] In *Coleman* the claimant, fifty-seven years of age, had a sixth grade education and for thirty-seven years had been an operator of heavy earth moving equipment. The uncontradicted medical evidence sustained his contention that following his injury he was no longer able to perform the duties incident to his vocation. He could do no heavy work that required lifting nor could he operate any machine that would involve rough bumping or jarring. He was able to perform jobs that would require only light work, such as that of a night watchman; and since he had some mechanical skill, he could do light maintenance work if such were available. As stated by his doctor, there were hundreds of other types of employment that he could do so long as it did not require him to engage in strenuous lifting. The claimant established that he had repeatedly sought employment through his former employer, the South Carolina State Employment Service, and through some eighteen other potential employers. The industrial commission found as a fact: "[T]he employee has been unable to obtain employment in the open labor market, suitable to his capacity . . . thus suffering a total loss of wage earning capacity."[3]

The county court, reversing the award of the industrial commission, held there was no finding by the industrial commission that a reasonable stable market did not exist for the services which the employee could perform, stating that the commission's finding was limited to a holding that the claimant was unable

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1. 245 S.C. 625, 142 S.E.2d 43 (1965).

2. See generally Reid, *An Analysis of the Problem of Determining Non-Schedule Partial Disability Claims Under the South Carolina Workmen's Compensation Law*, 9 S.C.L.Q. 355 (1957).

3. 245 S.C. 625, 627, 142 S.E.2d 43 (1965).

to secure employment because of his injury and for that there was no competent evidence.

In reversing, the South Carolina Supreme Court stated in an excellent decision that the burden was upon the claimant to establish that he was unable to perform services other than those that were so limited in quality, dependability, or quantity that a reasonable stable market for them did not exist. The court pointed out that the employee could have offered stronger proof by calling an expert such as the director of the employment service or by showing that his partial physical incapacity was responsible for his failure to obtain employment, but it held there was sufficient evidence for reasonable inference to be made that his unemployment and inability to obtain work of any kind was a direct result of his injury and limited physical capacity. This decision suggests the desirability of calling experts in cases of this kind (such as the director of the employment service) to testify and to establish whether a stable market exists for the employee seeking work with a partial physical disability.[4]

B. Unusual Exertions

Greer v. Greenville County[5] is one of several cases decided by the court, all of which concluded that there was no causal connection between the employment and a heart attack. In *Greer* the court sustained the commission's denial of an award and further held that an objection to a hypothetical question as having omitted several material facts cannot be made for the first time on review. The objection must be made at the time and must specifically point out the imperfection.

Jones v. Williamsburg County[6] sustained a finding by the commission that the death of an employee truck driver was not related to his employment as did the decision in *Rhodes v. Guignard Brick Works*.[7]

4. Certainly it is not necessary that she, or any other claimant, be bedridden to come within the statute's provisions. Neither is she required to sell apples, Adams v. Flemming, 276 F.2d 901 (2d Cir. 1960), nor "by the use of a catalogue of the nation's industrial occupations . . . go down the list and verbally negative [her] capacity for each of them or their availability to [her] as an actual opportunity for employment." Butler v. Flemming, 228 F.2d 591, 595 (5th Cir. 1961). . . . Where the statute refers to "any substantial gainful activity" the word "any" must be read in the light of what is reasonable and not what is merely conceivable. *Cf.* Thomas v. Celebrezze, 331 F.2d 541, 546 (4th Cir. 1964).

5. 245 S.C. 442, 141 S.E.2d 91 (1965).

6. 245 S.C. 434, 141 S.E.2d 100 (1965).

7. 245 S.C. 304, 140 S.E.2d 487 (1965).

In *Lorick v. South Carolina Elec. & Gas Co.*[8] the court reversed the finding of the industrial commission that the bus driver's employment was related to his death on the grounds that the medical testimony failed to establish that the exertion of the deceased was the cause of the heart attack. The court distinguished *Grice v. Dickerson, Inc.*[9] and pointed out that the determination of causal connection between an accident and death by coronary occlusion requires expert medical testimony.

C. Loss of an Eye

In *Moss v. Davey Tree Expert Co.*[10] the employee, who had only seven and one-half percent loss of vision in his left eye because of a pre-existing injury, sustained a subsequent injury which required the removal of the eyeball. The court held that "one who has only a partial vision in an eye and loses such eye as the result of a second injury, is entitled to the scheduled compensation for the loss of such eye."[11] It is to be noted that the controlling fact in this decision was the necessity of the removal of the eyeball itself, the court holding that this was a loss of an organ and not affected by prior partial disability.

D. Accidents Arising Out of and in the Course of the Employment

In *Douglas v. Spartan Mills*[12] the claimant sustained an accident due to a defective steering apparatus while traveling to an industrial commission hearing on a disputed compensation claim. The court held that the claimant was on an errand for his own benefit and that the only connection with his employment was that the employer co-operated with and accommodated the claimant by notifying the claimant and letting him off from work for the purpose of attending the hearing. Compensation was denied.

In *Williams v. South Carolina State Hosp.*[13] the claimant, a nurse, had completed her duties and was injured as her foot slipped off the curb along the street or drive maintained by the hospital where she parked her car for the day. The court in

8. 245 S.C. 513, 141 S.E.2d 662 (1965).
9. 241 S.C. 225, 127 S.E.2d 722 (1962).
10. 245 S.C. 127, 139 S.E.2d 532 (1964).
11. *Id.* at 133-34, 139 S.E.2d at 535.
12. 245 S.C. 265, 140 S.E.2d 173 (1965).
13. 245 S.C. 377, 140 S.E.2d 601 (1965).

affirming an award for compensation reasoned that the parking area was maintained by the employer for the mutual benefit of the employer and the employee and was as necessary as the maintenance of its buildings. The court stated that the claimant in walking from the building where she worked to the parking area was performing an incident to her work and that the injury resulted from the risk arising out of her employment.

E. Notice

The court in *Clements v. Greenville County*[14] affirmed a reversal of the industrial commission denying compensation for the claimant on the ground of his failure to file a claim within one year after his accident. The county paid the claimant's medical bills for a two month period and the county supervisor testified that he knew that the original medical bill had been paid by the county or carrier and thought there would be further claims as time went on. The supervisor further testified had he known the claimant had incurred other expenses, the county would have provided for payment. The court, quoting the uncontradicted testimony of the supervisor, concluded the only reasonable inference to be drawn was that the claimant was led to believe that his injury was compensable and that his claim would be taken care of by his employer. Under these circumstances the defendants were estopped to assert the one year statute of limitations.

F. Coverage

In *Addison v. Dixie Chevrolet Co.*[15] the injured employee was originally employed by Dixie Chevrolet. Subsequent to his employment an oral arrangement was established between the shop foreman and the company. The foreman entered into a lease agreement with the company which permitted him to operate the shop and to have the employee, Addison, work for him and not the company. The shop foreman did not have workmen's compensation coverage. The court held that the only issue before the commission was whether the claimant knew and consented to the new employer-employee relationship resulting from the oral agreement between the defendant and the shop foreman. The commission's finding that the employee was not bound by this

14. 246 S.C. 20, 142 S.E.2d 212 (1965).
15. 246 S.C. 86, 142 S.E.2d 442 (1965).

new relationship was sustained. The court further stated that such issue was not jurisdictional, and the commission's findings were binding when adequately supported by the evidence.

Conner v. Conway Glass & Paint Co.[16] affirmed the industrial commission's finding of adequate evidence to support the conclusion that the claimant was the employee of a subcontractor and therefore covered under the act.[17]

16. 244 S.C. 294, 136 S.E.2d 772 (1964).
17. S.C. CODE ANN. § 72-112 (1962).